

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Williams Communications, Inc.,)	
SBC Communications Inc.,)	File No. SCL-T/C-20000510-00017
SBCS Pacific Cable Holdings, Inc., and)	
SBCI-Pacific Networks, Inc.)	
)	
Application for authority for transfer of)	
control of cable landing licenses)	
)	
Application for <i>nunc pro tunc</i> approval of a)	
<i>pro forma</i> transfer of control)	
)	
and)	
)	
Williams Communications, Inc., and)	File No. SCL-ASG-20000929-00032
SBCI-Pacific Networks, Inc.)	
)	
Application for <i>nunc pro tunc</i> approval of a)	
<i>pro forma</i> assignment of submarine cable)	
landing licenses)	

MEMORANDUM OPINION AND ORDER

Adopted: October 4, 2000

Released: October 6, 2000

By the Chief, Telecommunications Division:

I. Introduction and Background

1. In this Order, we grant the application of Williams Communications, Inc. (Williams), SBC Communications Inc. (SBC), SBCS Pacific Cable Holdings, Inc. (SBCS), and SBCI-Pacific Networks, Inc. (PNI) (together, "Applicants"), seeking authority for: (1) the *nunc pro tunc pro forma* transfer of control of PNI from SBC to SBCS; and (2) the transfer of control to Williams of PNI's interests in two submarine cable landing licenses. We also grant the application of Williams and PNI for the *nunc pro tunc pro forma* assignment to Williams of PNI's interests in

the two submarine cable landing licenses.

2. On August 21, 1998, we granted the joint application of five entities, including PNI, pursuant to the Cable Landing License Act,¹ and Executive Order No. 10530,² for authority to land and operate, on a non-common carrier basis, the China-U.S. Cable Network, extending between the U.S. Mainland, China, Taiwan, Japan, South Korea, and Guam.³ On July 8, 1999, the Commission granted the joint application of several entities, including PNI, pursuant to the Cable Landing License Act and Executive Order No. 10530, for authority to land and operate, on a non-common carrier basis, the Japan-U.S. Cable Network, extending between the U.S. Mainland, Hawaii, and Japan.⁴

3. Prior to April 10, 2000, SBC International Operations, Inc. was the immediate parent of PNI. On that date, SBCS was inserted into the corporate chain of ownership between SBC, as ultimate parent, and PNI, as licensee. SBCS became the immediate parent of PNI. There was no change in the ultimate ownership or control of the licensee, which remained a wholly owned subsidiary of SBC.⁵ The Application describes the transaction as *pro forma* in nature and seeks *nunc pro tunc* approval.

4. PNI is a corporation organized under the laws of Delaware. SBCS is a corporation organized under the laws of Nevada. Williams is a corporation organized under the laws of Delaware, and is wholly owned by Williams Communications Group, Inc., a U.S. company, which in turn is 86 percent owned by The Williams Companies, Inc., a U.S. company that is traded publicly on the New York Stock Exchange.⁶

5. Applicants assert that, under the proposed transaction, Williams would purchase PNI, which would become a direct wholly owned subsidiary of Williams,⁷ and that PNI is, and would remain, a licensee of the China-U.S. and Japan-U.S. cable systems.⁸

¹ See An Act Relating to the Landing and Operation of Submarine Cables in the United States, 47 U.S.C. §§ 34-39 (Cable Landing License Act).

² See Exec. Order. No. 10530, *reprinted as amended in* 3 U.S.C. § 301.

³ See *AT&T Corp. et. al*, File No. SCL-98-002, Cable Landing License, 13 FCC Rcd 16232 (TD/IB 1998).

⁴ See *AT&T Corp. et. al*, File No. SCL-LIC-19981117-00025, Cable Landing License, 14 FCC Rcd 13066 (1999).

⁵ See Application of Williams Communications, Inc., SBC Communications Inc., SBCS Pacific Cable Holdings, Inc., and SBCI-Pacific Networks, Inc. for Transfer of Control of Submarine Cable Landing Licenses, File No. SCL-T/C-20000510-00017 (filed May 10, 2000) (“Application”), at 1-2.

⁶ See *id.* at 2-3, 5-6.

⁷ See *id.* at 5.

⁸ See *id.* at 1.

6. Williams and PNI filed an additional application, stating that there was an inadvertent assignment of PNI's interests in the China-U.S. and Japan-U.S. cables to Williams prior to Williams and PNI receiving authority for these transactions.⁹ Williams and PNI argue that the public interest has not been harmed by this inadvertent assignment.¹⁰ They describe this assignment as *pro forma* in nature and ask for authority *nunc pro tunc* to assign the licenses to Williams.

II. Discussion

7. On May 10, 2000, the Applicants submitted the above-captioned Application seeking authority to transfer control of PNI's interests in the two submarine cable landing licenses from SBCS to Williams through the sale of PNI to Williams.¹¹ On May 19, 2000, we put the Application on public notice.¹² We received no comments.

8. Pursuant to Section 1.767(b) of the Commission's rules,¹³ the Cable Landing License Act, and Executive Order No. 10530, we informed the Department of State of the Application.¹⁴ After coordinating with the National Telecommunications and Information Administration and the Department of Defense, the Department of State stated that it has no objection to the proposed transfer of control of the two cable landing licenses held by PNI.¹⁵

9. On May 23, 2000, the Applicants filed a Request for Special Temporary Authority (STA) to transfer to Williams control of the two submarine cable landing licenses held by PNI. Applicants asserted that they needed the STA by June 14, 2000, to enable Williams to provide

⁹ See Application of Williams Communications, Inc. and SBCI-Pacific Networks, Inc. for *Nunc Pro Tunc* Approval of a *Pro Forma* Assignment of Submarine Cable Landing Licenses, File No. SCL-ASG-20000929-00032 (filed Sept. 29, 2000) ("Assignment Application"), at 2.

¹⁰ See Application at 1.

¹¹ See *supra* n. 5. Applicants also sought permission to change the name of PNI, in an unspecified manner, after consummation of the transfer of control of PNI's cable landing licenses to Williams. See Application at 2-3. Because Williams subsequently withdrew this request, we do not address it in this order.

¹² See *Non Streamlined International Applications Accepted for Filing*, Public Notice, Report No. TEL-00234NS (rel. May 19, 2000).

¹³ See 47 C.F.R. § 1.767(b).

¹⁴ See Letter from George Li, Deputy Chief, Telecommunications Division, International Bureau, Federal Communications Commission, to Steven Lett, Deputy U.S. Coordinator, Office of International Communications and Information Policy, Bureau of Economic and Business Affairs, U.S. Department of State (May 19, 2000).

¹⁵ See Letter from Gregory W. Chapman, Acting United States Coordinator, Office of International Communications and Information Policy, U. S. Department of State, to Donald Abelson, Chief, International Bureau, Federal Communications Commission (September 22, 2000). We informally advised the Department of State of the Assignment Application, and the Department of State stated verbally that it has no objection to the proposed *pro forma* assignment of the licenses to PNI's parent Williams.

uninterrupted service to customers on the China-U.S. cable system.¹⁶ On June 9, 2000, we granted the STA, by grant stamp, with an expiration date of December 6, 2000. On July 21, 2000, counsel for Williams advised the Commission that, on June 23, 2000, PNI was sold to Williams.¹⁷

10. Pursuant to Section 1.767(a)(8) of the Commission's rules,¹⁸ Applicants disclose Williams' affiliations with foreign carriers. Applicants certify that Williams is affiliated with foreign carriers in Australia, Brazil, Singapore, and the United Kingdom.¹⁹ Therefore, as a result of the transfer of control to Williams, PNI will have affiliations with foreign carriers in each of these countries. Each of these countries is a Member of the World Trade Organization. Therefore, we presume that Applicants' affiliations with these carriers do not pose any concerns that would justify denying the applications.²⁰

11. Applicants have characterized as *pro forma* the transfer of control of PNI from SBC to SBCS and the assignment of licenses from PNI to Williams. We agree with this characterization because both transactions are similar to categories of transactions that, in contexts other than submarine cable landing licenses,²¹ we have deemed to be *pro forma*.

12. Applicants have stated that approval of these transactions will serve the public interest

¹⁶ See Request for Special Temporary Authority, File No. SCL-STA-20000602-00022 (filed May 23, 2000), at 1-2.

¹⁷ See Letter from Peter A. Rohrbach and Douglas A. Klein, Counsel for Williams Communications, Inc., to Magalie Roman Salas, Esq., Secretary, Federal Communications Commission (July 21, 2000).

¹⁸ See 47 C.F.R. § 1.767(a)(8).

¹⁹ Williams, which will control PNI, is affiliated with Global Satellite and Video Services (Asia) PTE Ltd., a corporation organized and operating under the laws of Singapore; Global Access Telecommunications Services Ltd. and Vyvx International, both corporations organized and operating under the laws of England and Wales; ATL-Algar Telecom Leste S.A., a carrier authorized to provide telecommunications services in Brazil; and PowerTel Limited (previously known as Spectrum Network Systems Limited), a carrier authorized to provide telecommunications services in Australia. See Application at 5; see also Assignment Application at 4. The Application states that these affiliates lack sufficient market power to affect competition adversely in the United States. See *id.* at 7. The Application observes that Williams operates on the U.S.-Singapore and U.S.-U.K. routes as a non-dominant carrier under Section 214 authority, citing *Overseas Common Carrier Section 214 Applications Actions Taken*, Public Notice, Rep. No. I-8235, DA 97-665 (rel. Apr. 3, 1997) and *Overseas Common Carrier Section 214 Applications Actions Taken*, Public Notice, Rep. No. TEL-00013, DA98-1971 (rel. Oct. 1, 1998). See *id.* The Application further states that Williams' affiliate in Australia is a competitive local exchange and long distance provider that competes with Telstra primarily in Brisbane, Melbourne, and Sydney, and that Williams' affiliate in Brazil is a B-band cellular licensee in Rio de Janeiro and Espirito Santo. See *id.*

²⁰ See *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket Nos. 97-142 and 95-22, Report and Order and Order on Reconsideration, 12 FCC Rcd 23891, 23913 ¶ 50, 23933-34 at ¶ 93 (1997) (*Foreign Participation Order*), Order on Reconsideration, FCC 00-339 (rel. Sept. 19, 2000).

²¹ Cf. 47 C.F.R. § 63.24(a)(5).

because it will enhance international competition by allowing Williams to provide its carrier services as soon as possible.

13. Upon consideration of the record in this proceeding, and in view of the foregoing, we conclude that grant of the transfer of control (including the *pro forma* transfer of control) sought in the Application and the *pro forma* assignment of licenses sought in the Assignment Application will serve the public interest and is consistent with the Cable Landing License Act. We find it reasonable in this instance to grant the *nunc pro tunc* requests made in these applications. We caution Applicants, however, that the Commission's rules require prior approval of such transfers of control and assignments of licenses and urge Applicants to plan accordingly in the future.

14. We modify the initial authorizations to reflect these transactions. We do not modify the initial authorizations in any other respect.

III. Ordering Clauses

15. Consistent with the foregoing and pursuant to the Cable Landing License Act and Executive Order 10530, IT IS ORDERED that Applications Nos. SCL-T/C-20000510-00017 and SCL-ASG-20000929-00032 ARE GRANTED, the transactions listed herein are authorized, and the China-U.S. Cable Landing License (File No. SCL-98-002) and the Japan-U.S. Cable Landing License (File No. SCL-LIC-19981117-00025) ARE HEREBY MODIFIED to reflect these transactions.

16. This Order is issued under Section 0.261 of the Commission's rules, 47 C.F.R. § 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's rules, 47 C.F.R. §§ 1.106, 1.115, may be filed within 30 days of the date of public notice of this order.²²

FEDERAL COMMUNICATIONS COMMISSION

Jacquelynn Ruff
Associate Chief, Telecommunications Division
International Bureau

²² See 47 C.F.R. § 1.4(b)(2).